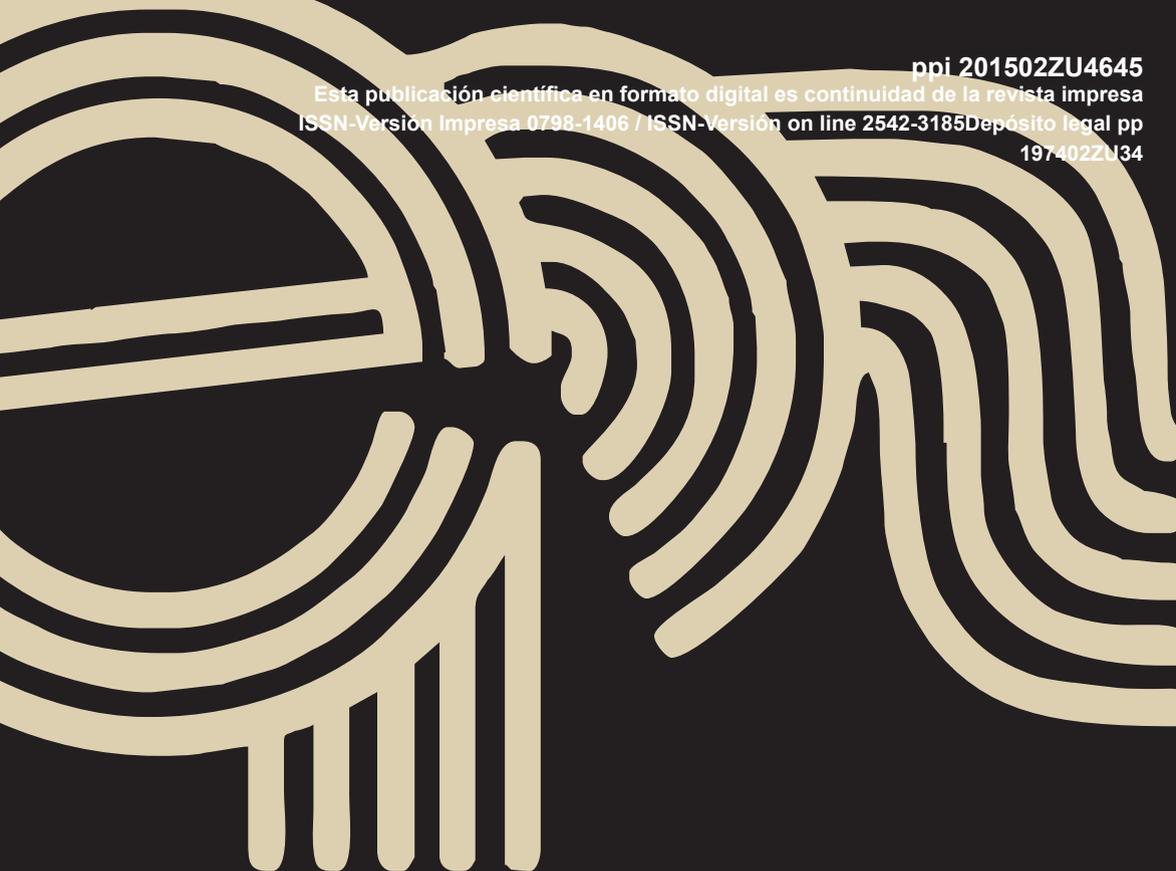


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Interpretation of legal norms in modern jurisprudence

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Abstract

The purpose of the research was to consider appropriate forms of interpretation of legal norms in modern jurisprudence. In the main content it has been established that the interpretation results in a general conclusion or a sum of conclusions reached by the subject of interpretation in the process of clarification of the rule of law (legal norms), using the whole set of methods of interpretation, which is appropriate to the legal reality. The methodological basis of the research was presented as comparative-legal and systematic analysis, formal-legal method, as well as hermeneutic method, method of analysis and synthesis. It has been concluded that the procedure for achieving the purpose of interpretation should be as follows: grammatical interpretation - teleological interpretation - clarification of the conformity of the essence of the content of the legal norm with the principles of law - systematic interpretation - special legal interpretation - logical interpretation - functional interpretation - historical interpretation - repeated application of the interpretation procedure upon receipt of new data. If this procedure is properly followed, it is possible to achieve the conditions for the achievement of an adequate legal hermeneutics, which places the texts in their context of meaning.

Keywords: modes of interpretation of legal norms; hermeneutic purpose; legal understanding; criminal liability; types of legal understanding.

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Interpretación de las normas jurídicas en la jurisprudencia moderna

Resumen

El propósito de la investigación fue considerar formas adecuadas de interpretación de las normas jurídicas en la jurisprudencia moderna. En el contenido principal se ha establecido que la interpretación da como resultado una conclusión general o una suma de conclusiones a las que llega el sujeto de interpretación en el proceso de clarificación del Estado de derecho (normas jurídicas), utilizando todo el conjunto de métodos de interpretación, que es adecuado a la realidad jurídica. La base metodológica de la investigación se presentó como análisis comparado-jurídico y sistemático, método formal-jurídico, así como método hermenéutico, de análisis y síntesis. Se ha concluido que el procedimiento para lograr el fin de la interpretación debe ser el siguiente: interpretación gramatical - interpretación teleológica - aclaración de la conformidad de la esencia del contenido de la norma jurídica con los principios del derecho - interpretación sistemática - interpretación jurídica especial - interpretación lógica - interpretación funcional - interpretación histórica - aplicación repetida del procedimiento de interpretación al recibir nuevos datos. De seguirse adecuadamente este procedimiento se pueden lograr las condiciones de posibilidad para el logro de una adecuada hermenéutica jurídica, que sitúa los textos en su contexto de significación.

Palabras clave: modos de interpretación de las normas jurídicas; finalidad hermenéutica; entendimiento jurídico; responsabilidad penal; tipos de entendimiento jurídico.

Introduction

Practice of law enforcement shows that it is absolutely impossible to find out the actual content of a legal norm just by means of simply reading its text. This is due to peculiarities of legal norms themselves, forms of their functioning and external expression. Study of these features and forms, as well as disclosure of the essential content of a norm necessarily require the use of ways for interpretation of legal norms. Interpretation itself provides the process and results of clarifying and explaining contents of legal norms.

A subject of interpretation of legal norms can use ways for interpretation in an arbitrary sequence based on his/her own experience. The following question arises: how can one perform interpretation of legal norms in an optimal way, harmoniously taking into account requirements set in principles of law? (Buha *et al.*, 2022).

Urgency of the topic is determined by importance of democratic transformations in Ukraine which are aimed at formation of a harmonious legal state, and which put forward the latest requirements for functioning of the national legal system, the process of implementing law, which is inextricably linked with such a type of intellectual activity as interpretation of legal norms. (Bezpalova *et al.*, 2021).

1. Literature review

Analysis of publications and research works on the subject of interpretation of legal norms shows that scientists working in the sphere of the theory of the state and law, constitutional law, civil law, economic law and other legal sciences considered and are considering the problem of interpretation of legal norms in their works. In particular, the matter of interpretation of legal norms and the interpretation of legal norms of law in Ukrainian legal science was studied by Halaburda Nadiia, Leheza Yevhen, Chalavan Viktor, Yefimov Volodymyr, Yefimova Inna (Halaburda *et al.*, 2021).

The theory of interpretation developed yet in ancient Greek jurisprudence under the name “hermeneutics” (from the Greek *hermeneutike* - “art of interpretation”). Nowadays, legal hermeneutics has developed as a field of knowledge of the philosophy of law. The process of interpreting legal norms is related to both assessment of actual circumstances and clarification of contents of legal norms applied to these circumstances.

Clarification of contents requires interpretation of legal norms. Sometimes interpretation of a norm is not difficult, but in many cases this procedure requires a high level of professionalism, knowledge not only in a certain field of law, but also in the sphere of formal logic, philosophy, legal theory, linguistics and history (Kobrusieva *et al.*, 2021).

2. Materials and methods

The research is based on work of foreign and Ukrainian researcher on methodological approaches to understanding public relations from the point of view of the theory of law, administrative law, civil law, etc.

With the help of the epistemological method, the methods of protecting rights of individuals in administrative proceedings, etc., were clarified; thanks to the logical-semantic method, the conceptual apparatus was deepened, and the methods of protecting the rights of individuals in administrative proceedings were determined from the point of view of the theory of law, administrative law, etc. Thanks to the existing methods of law,

we managed to analyze the essence of ways (methods) used for protecting rights of individuals in administrative proceedings, etc.

3. Results and discussion

Let's consider the main definitions of the interpretation of a legal norm, which are adhered to by modern domestic researchers of the theory of law and the civil law, and let's find out what elements (stages) it consists of.

V.K. Antoshkina defines the essence of interpretation of legal norms as follows:

In general, interpretation of legal norms is defined as the intellectual and volitional activity of a person aimed at establishing the valid content of a legal precept for its further effective application with the aim of increasingly securing rights and interests of legal subjects (Antoshkina, 2011: 30).

The following definition is proposed by T.P.Kudlai: "Interpretation of a legal norm is an activity of subjects aimed at clarifying contents of the legal norm for the purpose of its correct application and implementation" (Kudlai, 2009: 59).

Skakun O.F. defines interpretation of legal norms in the following way:

Interpretation of legal norms is an intellectual-volitional cognitive activity, which consists in establishing the exact content (meaning) of legal norms and is carried out with the help of certain methods (techniques) with the aim of their correct application and direct implementation" (Skakun, 2012: 49).

The scientist distinguishes two stages of law interpretative activity:

clarification - disclosure of the contents of legal norms (their separate elements) "for oneself" with the aim of their correct implementation and application (it does not go beyond the consciousness of the interpreter himself/herself and does not have external forms of expression: the "will" of the interpreter combines the "will of the legislator" and the "will of the law");

explanation - disclosure of the contents of legal norms (their separate elements) "for others" in order to eliminate ambiguity in its understanding and ensure correct application in the circumstances these norms are intended for. Sometimes it is enough to understand contents of the law for correct solution of a specific case (Skakun, 2012).

According to D.M. Mykhailovych:

Interpretation in the proper sense of this word should be understood as awareness of the contents of legal norms, since awareness itself reflects the epistemological nature of the interpretation process, its focus on learning

the meaning of legal phenomena. As for explanation, it is the next stage after interpretation (Mykhailovych, 2003: 68).

Based on the definitions mentioned above, it can be concluded that the first stage of interpretation of legal norms is awareness (clarification) of the contents of legal norms “for oneself”, and the second stage consists in clarification, disclosure of the contents of legal norms (their separate elements) “for others” for the purpose of correct implementation and application of these legal norms.

Let’s analyze the first stage of interpretation of civil law norms. Awareness (clarification) of the contents of legal norms “for oneself” is an internal mental process that does not go beyond the interpreter’s consciousness, and this is nothing but legal understanding.

K.G. Volynka notes that the issue of legal understanding belongs to the main ones in the theory of the state and law and it defines legal understanding as:

The process and result of a person’s mental activity aimed at learning the law, its perception (evaluation) and receiving attitude towards it as towards an integral social phenomenon. When studying various theories and views on law the following circumstances should be taken into account: first of all, the historical conditions of law existence the researcher lived in; secondly, the fact that the result of legal understanding always depends on researcher’s religious, ideological, moral position; thirdly, which side of the law is taken as the basis of this or that concept” (Volynka, 2003: 320).

Let’s consider the main provisions of the natural-law scientific approach and positivistic scientific approach to the understanding of law and let’s determine their place and significance in interpretation of legal norms by modern scientists.

The positivist approach determines that law is a hierarchy of norms, a normative regulator of social relations. Law and right are equated. Legal norms must be subordinated to legal force. The state is a purely legal phenomenon that ensures a legitimate legal order. Human rights are considered as gifts of the state. The theory is characterized by Latin phrases: “The law is hard but it is the law” and “The law is in force” (Kotiuk, 1996: 66).

The natural-law approach to understanding determines that the original form of existence of law is social consciousness, an idea (concept) of law with natural rights of a person being an important component of it (such natural rights of a person are inalienable and belong to a person starting from his/her very birth - the rights to life, free development, work, etc.).

The notions of law and right are distinguished; primacy is given to natural law as an expression of justice (morality). The theory of natural law

can be described by the phrase: “Law is the science of what is good and fair” (*Jus est ars boni et aequi*).

The next step is to examine how the main methods of interpretation are determined by modern domestic legal theory researchers.

Based on the analysis of the studied sources, we can classify the main ways for interpretation of legal norms and give them a brief description as follows. Grammatical interpretation is a method that includes awareness of individual words and terms of the entire sentence and the group of sentences. Systematic interpretation - makes it possible to reveal the content of a legal norm in connection with other norms, with general regulatory provisions, with the principles of law. This way makes it possible to reveal the content of a legal norm in connection with other norms, since it does not act in isolation.

The norm is compared with other norms, its place in this regulatory act, in the field of law, in the legal system is established. Teleological (targeted) interpretation is interpretation aimed at researching the purpose of issuing the corresponding regulatory and legal act.

Historical interpretation is a way of interpretation based on the awareness of the contents of legal norms based on the study of the specific historical conditions these norms were adopted under as well as the purpose of those norms determined at that period of time.

Functional interpretation means clarification of the content of legal norms based on the analysis of specific circumstances, conditions the respective legal norm functions in. It considers the effect of legal norms in the dynamic plane (the will of the “actual legislator”), alternative valid legal norms contained in the precept of other sources (forms) of law.

Logical interpretation is a way of interpreting the contents of legal norms based on the laws and rules of formal logic. Special-legal interpretation presupposes clarification of the content of a norm, based on achievements of the legal science and practice, knowledge of legal technique, technical-legal methods and ways.

O.F. Skakun notes that all ways for legal interpretation are used together, as a single set. It is not necessary to single out logical and special legal ways (methods) of interpretation separately, since the laws of logic (formal and dialectical) are used in all determined methods, and lawyer’s interpretation cannot be other than specifically legal one, because it constitutes an internal professional valuable side of the interpreter and other ways for interpretation will not take place without it.

Therefore, logical and special legal analysis are not methods for interpretation of legal norms, but rather “fundamental” principles and qualitative characteristics of the interpreter, and as such they are included

in the system of his/her intellectual activity being the basis of this activity (Skakun, 2012).

One should agree with the opinion of O.F. Skakun about logical interpretation, but in our opinion special-legal interpretation should be singled out in a separate way for interpretation because a lawyer needs to interpret terms not only in the field where he/she is a highly qualified specialist, but also in other fields of law where he/she is only an ordinary specialist.

According to D. M. Mykhailovych, historical interpretation is an optional method, as it is used only when in order to establish a valid content of a normative precept, it is necessary to refer to the socio-political circumstances of its adoption, the content of the previous normative act, and other relevant “external sources” - alternative projects, explanatory notes, reports, speeches of deputies, etc., (Mykhailovych, 2003).

We cannot agree with this position, because if we do not take into account the historical way for interpretation of legal norms, the result will not be correct. It will be impossible to correctly interpret, apply and accordingly implement the goal that the “ideal legislator” laid down in the norm of law in the past, without studying the specific historical conditions the norm was adopted under.

Based on the analysis of the specified definitions of the ways for interpretation of legal norms, the following conclusion has been made, namely: among the seven ways of interpreting the norms of law, none of them mentions a direct requirement to check the norms of law for compliance with the signs of the natural-law approach to understanding the law. In the system way (method), only the need to check the contents of legal norms for compliance with the principles of law is established (Villasmil Espinoza *et al.*, 2022).

The principles of law include the principle of social freedom, justice, equality (equality of all before the law), unity of subjective rights and objective duties, humanism, liability for fault, and the principle of legality (Matviichuk *et al.*, 2022).

Therefore, qualitative interpretation of legal norms requires application of ways (methods) for interpretation of legal norms, revealing the principles of law in accordance with the requirements of the systematic method for interpreting legal norms, and finding out whether the respective legal norm meets the requirements put forward by the natural-law and positivist approaches to understanding law (Nalyvaiko *et al.*, 2022). Let's try to identify common features when interpreting legal norms. To do this, let's examine the sequence proposed by modern scientists for applying ways used for interpretation legal norms (Tylchuk *et al.*, 2022).

M.H. Bratasiuk notes that the 17th-18th centuries gave birth to works by such authors as Eckhart, Wittich, Sammet and especially to the work by F. Savigny “*Yuristische Methodenlehre*”. These works mentioned alternation of grammatical, logical, historical and systematic research of exposition of legal precepts. The same works also gave the idea of hermeneutic circle (Patei-Bratasiuk, 2010).

After analyzing the existing approaches in the theory of law regarding the number of ways for interpretation and the sequence of their use, D. M. Mykhailovych concluded that there is a certain “algorithm of interpretation”, which has the following schematic form: grammatical interpretation - logical interpretation - systematic interpretation - teleological interpretation - historical interpretation (Mykhailovych, 2003).

Skakun O.F. Investigates ways for interpretation in a certain sequence; and based on this sequence we can determine the following algorithm of interpretation of legal norms: “grammatical interpretation - systemic interpretation - teleological interpretation - historical and political interpretation - functional interpretation - logical interpretation - special legal interpretation” (Skakun, 2012: 42).

Thus, based on consideration of the given examples of sequences of ways for interpretation, we can generalize that the grammatical, systematic and theological ways for of interpretation of legal norms are in the first place. It is worth agreeing with this order of applying ways for interpretation (Leheza *et al.*, 2022).

In our opinion, from the systematic way for interpretation of legal norms it is advisable to separately single out verification of compliance with the principles of law. Because research of the issue of whether a legal norm has a legal content is extremely important (Kolinko *et al.*, 2019).

So, for example, M.H. Bratasyuk rightly points out as follows: “Ukrainian jurists are still looking for the “letter of the law”, but why should one look for it, if the law is written on a by-order basis? Will the fact that this “letter of the law” is found increase justice in the society? The array of the current Ukrainian legislation contains a significant number of non-legal acts, i.e., acts that deny natural, inalienable human rights, acts created under conditions of an authoritarian regime.

So many people puzzle over them, looking for the “letter of the law”. But what does the society have to gain from this? What is added as a result to the common weal, the common good?” (Patei-Bratasiuk, 2010).

Conclusions

Therefore, based on the analysis of the specified definitions and views, the following conclusion has been drawn that the procedure for achieving the goal of interpretation should be as follows: grammatical interpretation - teleological interpretation - clarification of compliance of the essence of legal norm content with the principles of law - systematic interpretation - special legal interpretation - logical interpretation - functional interpretation - historical interpretation - repeated application of the interpretation procedure when receiving new data.

Application of the proposed interpretation procedure will contribute to prevention, overcoming and elimination of some of problems of practical interpretation of legal norms and will open the way to increasing effectiveness of legislation, increasing its importance in reforming Ukrainian society as well as to reducing complaints filed to the European Court of Human Rights (Ukraine takes the first place in terms of the number of complaints against the state from its citizens filed to the European Court of Human Rights) and, as a result, to a more reliable provision of rights and freedoms of a person and a citizen.

It should also be noted that when clarifying the true meaning of terms, obtaining additional or clarified data, it is necessary to apply the procedure of interpretation of legal norms again from the step (way for interpretation) they have an effect on. Interpretation will result in a general conclusion or a sum of conclusions reached by the subject of interpretation in the process of clarifying the rule of law (legal norm) using the entire set of interpretation methods, which is adequate to the actual content of this rule and meets the criteria of truth and correctness of the result of interpretation.

Bibliographic References

- ANTOSHKINA, Valeriia Kostiantynivna. 2011. Reasons for the interpretation of civil law norms: Actual problems of civil law: the materials of the «round table» are dedicated. in memory of Prof. Genghis Khan by Nufatovych Asimov. National Law Academy of Ukraine named after Yaroslav the Wise. Right. Kharkiv, Ukraine.
- BEZPALOVA, Olha; YUNINA, Maryna; KOROHOD, Svitlana; REZVOROVICH, Kristina; OHANISIAN, Tsahik. 2021. "Legal regulation of entrepreneurial activity in the national security system" In: Entrepreneurship and Sustainability Issues. Vol. 8, No. 3, pp. 340-355.
- BUHA, Volodymyr; IAKUBIN, Oleksii; MAZUR, Tamara; REZVOROVICH, Kristina; DARAGANOVA, Nina. 2022. "Legal regulation of the institute

- of control in the field of housing construction in the conditions of armed aggression of the Russian Federation” In: *Cuestiones Políticas*. Vol. 40, No. 73, pp. 151-171.
- HALABURDA, Nadiia; LEHEZA, Yevhen; CHALAVAN, Viktor; YEFIMOV, Volodymyr; YEFIMOVA, Inna. 2021. “Compliance with the principle of the rule of law in guarantees of ensuring the legality of providing public services in Ukraine” In: *Journal of law and political sciences*. Vol. 29, No. 4, pp. 100-121.
- KOBRUSIEVA, Yevheniia; LEHEZA, Yevhen; RUDOI, Kateryna; SHAMARA, Oleksandr; CHALAVAN, Viktor. 2021. “International standards of social protection of internally displaced persons: administrative and criminal aspects” In: *Jurnal cita hukum indonesian law journal*. Vol 9, No 3, pp. 461-484.
- KOLINKO, Tsahik; REZVOROVYCH, Krystyna; YUNINA, Maryna. 2019. “Legal characteristic of the franchise agreement in Germany” In: *Baltic Journal of Economic Studies*. Vol. 5, No. 1, pp. 96-100.
- KOTIUK, Volodymyr Oleksandrovych. 1996. *Theory of law: educational*. Ventur. Kyiv, Ukraine.
- KUDLAI, Tamara Pavlivna. 2009. *Theory of the state and law: study guide*. T.P. Kudlai NADU, Kyiv, Ukraine.
- LEHEZA, Yevhen; PISOTSKA, Karina; DUBENKO, Oleksandr; DAKHNO, Oleksandr; SOTSKYI, Artur. 2022. “The Essence of the Principles of Ukrainian Law in Modern Jurisprudence” In: *Revista Jurídica Portucalense*. Available online: In: [https://doi.org/10.34625/issn.2183-2705\(32\)2022.ic-15](https://doi.org/10.34625/issn.2183-2705(32)2022.ic-15). Consultation date: 13/01/2023.
- MATVIICHUK, Anatolii; SHCHERBAK, Viktor; SIRKO, Viktoria; MALIEIEVA, Hanna; LEHEZA, Yevhen. 2022. “Human principles of law as a universal normative framework” In: *Cuestiones Políticas*. Vol. 40, No. 75, pp. 221-231.
- MYKHAILOVYCH, Dmytro Marianovych. 2003. *Official interpretation of the law: abstract of the dissertation for obtaining the scientific degree of candidate of legal sciences*. Kharkiv National University of Internal Affairs. Kharkiv, Ukraine.
- NALYVAIKO, Larysa; LEHEZA, Yevhen; SACHKO, Oleksandr; SHCHERBYNA, Victor; CHEPIK-TREHUBENKO, Olha. 2022. “Principles of law: Methodological approaches to understanding in the context of modern globalization transformations” In: *Ius Humani. Law Journal*. Vol. 11, No. 2, pp. 55-79.

- PATEI-BRATASIUK, Mariia Hryhorivna. 2010. Anthropocentric theory of law: a study guide. Kyiv, Ukraine.
- SKAKUN, Olha Fedorivna. 2012. Theory of law and the state: a textbook. Alert. Kyiv, Ukraine.
- TYLCHYK, Vyacheslav; MATSELYK, Tetiana; HRYSHCHUK, Viktor; LOMAKINA, Olena; SYDOR, Markiiian; LEHEZA, Yevhen. 2022. "Administrative and legal regulation of public financial activity: Regulación administrativa y legal de la actividad financiera pública" In: Cuestiones Políticas. Vol. 40, No. 72, pp. 573-581.
- VILLASMIL ESPINOZA, Jorge; LEHEZA, Yevhen; HOLOVII, Liudmyla. 2022. "Reflections for the interdisciplinary study of the Russian Federation's invasion of Ukraine in 2022" In: Cuestiones Políticas. Vol. 40, No. 73, pp. 16-24.
- VOLYNKA, Kateryna Hryhorivna. 2003. Theory of the state and law: a study guide. MAUP. Kyiv, Ukraine.



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